NOTES OF CASES.

Telephone—Long Distance Message—Liability of Employer.—The first case involving the liability for toll of a subscriber for permitting a nonsubscriber to use his telephone for long distance messages is the Tennessee case of Cumberland Teleph. & Teleg. Co. *v.* Southern R. Co., 45 L. R. A. (N. S.) 990, 156 S. W. 853, which holds an employer is not, although he permits his employees to have access to his telephone, personally liable for long distance messages sent by them concerning their personal affairs.

Evidence of Habit.—What is the rule in regard to one's habit to do or not to do a particular thing as evidence of whether the thing was done? In Chabott *v.* Grand Trunk Railway Company, 88 Atlantic Reporter, 995, plaintiff was run over and killed by defendant's train. He was walking in the center of the track at the time, and the question subsequently arose as to whether he had used due care to look and listen for the approach of cars. To support this contention, it was sought to introduce in evidence his habit to look and listen under such circumstances. The Supreme Court of New Hampshire, in disposing of the question, said that, while it is not admissible to show general carefulness, yet "evidence of this character has been admitted to show whether the person did or did not do a particular act at the time in question upon the ground that a person is more apt to do a thing in the manner in which he was in the habit of doing it."

Abatement of a Fence as a Nuisance.—The charter of a city in West Virginia provides that the council thereof shall have the power "to regulate the making of division fences and party walls by the owners of adjoining and adjacent premises and lots; to prevent injury or annoyance to the public or individuals from anything dangerous, offensive, or unwholesome; and to abate by summary proceedings whatever in the opinion of the council is a nuisance." Plaintiff, a property owner in said city, constructed a fence which the city sought to have removed as being a nuisance; hence suit was brought by the owner to restrain such action. The West Virginia Supreme Court of Appeals held that as the city had not previously enacted an ordinance providing what acts or conditions should constitute a nuisance, according to the above provisions of the charter, and as the fence was not a nuisance per se, the city was in no position to have it removed. Donohue *v.* Fredlock, 79 Southeastern Reporter 736.—National Corporation Reporter.

Translation of Foreign Wills.—Testator, a resident of France, left a will in English, purporting to dispose of personal property only.

Subsequently, he made another testamentary instrument in the French language, also disposing of personal property. The Surrogate's Court, New York county, in Re Mayer's Will, 144 New York Supplement, 438, held that, as both were conceded to be interdependent, both were entitled to probate in New York, but that the French will must be translated into English before the decree of probate could be entered and the will enrolled.

Attempt to Alleviate Pain No Excuse for Involuntary Manslaughter.—Two young girls both received hypodermic injections of morphine at the same time, administered by defendant in Silver *v.* State, 79 Southeastern Reporter, 919. Both girls had eaten club sandwiches and drank beer; one of the girls vomited and was better, the other failed to vomit and died, and therefore it was contended that what was eaten and drunk and not the morphine injected into the blood was the cause of death. In affirming a conviction of involuntary manslaughter, the Court of Appeals of Georgia held that the expert evidence demanded a verdict that death was caused by morphine and not ptomaine poisoning, saying that "this inference is not without some force, but its weakness consists in the fact that no two persons are affected in the same manner, either by what they eat or drink, or by morphine; the effect of food or medicine upon a person largely depends upon the physical condition of the subject, and, as to the particular drug, upon the habit, but this discussion is academic, for the evidence is clear and strong that the decedent died from the effects of morphine poisoning." It was also held to be no defense that, in the administration of the drug, the intent was not to cause death, but to alleviate pain.

Negro's Testimony Not Believed by Court.—During the progress of a suit in Alabama, the judge was questioning a witness, who, it would seem, as appears from the case, was a colored person. In the presence and hearing of the jury the judge remarked, "I wouldn't believe a nigger any quicker than a pink-eyed rabbit." Later the judge told the jury that this statement of his should be disregarded. No error was assigned upon the improper statement, however, but the statement to the jury to disregard the remarks is made the subject of an assignment of error. On appeal the Alabama Supreme Court, in Rogers *v.* Smith, 63 Southern Reporter, 530, said that, while the remark was highly improper, and that in making it the trial judge palpably exceeded the limits of judicial discretion, yet, where no motion was made to discharge the jury, and the remarks were neither made a ground for motion for a new trial nor assigned as error on appeal, they were not ground for reversal.